USURY — NATURE AND VALIDITY OF USURIOUS CONTRACTS — GUARANTEE TO LENDER OF RISE IN VALUE OF STOCKS SOLD TO MAKE LOAN. — In return for a loan by the plaintiff the defendant agreed to repay the amount advanced with interest, the cost to the plaintiff of selling stock to procure the money loaned, and the rise in value of and dividends on the stock during the period of the loan. *Held*, that this does not constitute usury. *De Moltke-Huitfeldt* v. *Garner*, 145 N. Y. App. Div. 766, 130 N. Y. Supp. 558.

A lender may be compensated for his services or expenses in raising the money for the loan in addition to interest. *Thurston* v. *Cornell*, 38 N. Y. 281; *Kihlholz* v. *Wolf*, 103 Ill. 362. A contract guaranteeing to the lender the rise in value of stock sold to make the loan, without hazarding the sum advanced and interest, has been held usurious. *White* v. *Wright*, 3 B. & C. 273. A contrary result reached by the Massachusetts court was based on the ground that the contract contemplated two acts, the loan and the preliminary act of selling the stock, and that this preliminary act was consideration for the payment of the rise in value of the stock. *Snow* v. *Nye*, 106 Mass. 413. But in practically all cases the lender either disposes of property or foregoes an investment to make the loan. By a fair construction of the usury statute such a detriment is incident to and included in the transaction termed a loan. So it has been held that a lender cannot charge for the sacrifice he has made in selling securities to make the loan. *Van Tassell* v. *Wood*, 12 Hun (N. Y.) 388. The result reached by the principal case would seem to violate the spirit and lessen the effectiveness of the statute.

BOOK REVIEWS.

A TREATISE ON THE MODERN LAW OF EVIDENCE. By Charles Frederick Chamberlayne. Volumes 1 and 2. Albany: Matthew Bender & Company; London: Sweet & Maxwell. 1911. pp. cxxii, xxviii, 2328.

These two volumes are the first instalment of a larger work. The first volume, entitled "Administration," contains introductory matter, and deals with Law and Fact, the function of the Court and Jury, general principles governing Judicial Administration, and Judicial Notice. The latter subject is divided into "Judicial Knowledge" and "Common Knowledge," and a chapter on "Special Knowledge" follows. The second volume, which is entitled "Procedure," includes the Burden of Proof, Presumptions, Admissions, Confessions, and Former Evidence. The terms "Procedure" and "Administration" are used to mark the distinction between "judicial action controlled by rule and action not so controlled," and this distinction is much insisted on throughout the book. Mr. Salmond's criticism of the law of evidence — a criticism with a special point for this country beyond what its author can well have realized — is quoted with approval:

> "No unprejudiced observer can be blind to the excessive credit and importance attached in judicial procedure to the *minutiæ* of the law of evidence. This is one of the last refuges of legal formalism. Nowhere is the contrast more striking between the law's confidence in itself and its distrust of the judicial intelligence. The fault is to be remedied not by the abolition of all rules for the measurement of evidential value, but by their reduction from the position of rigid and peremptory to that of flexible and conditional rules. Most of them have their source in good sense and practical experience, and they are profitable for the guidance of individual discretion, though mischievous as substitutes for it."

And the advantage of flexible and rational methods as against the "rigidity of procedural law" is constantly urged. There are many acute and vigorous